D.B. INCOME TAX APPEAL NO.125/2006

Commissioner of Income Tax, Udaipur Vs. M/s. Choksi Heraeus Pvt. Ltd.

Date of judgment : 08th Dec., 2006

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. K.K. Bissa for the appellant.

Heard learned counsel for the appellant.

This appeal is directed against the order of the Income Tax Appellate Tribunal dated 3rd March, 2006.

Having considered the submissions placed before us we are satisfied that no substantial question of law arises for consideration in this appeal. The appeal relates to assessment year 1996-97. The assessment under Section 143(3) was completed on 9.3.1999 by computing deductions under Section 80-HH and 80-I by considering the assessee as an industrial undertaking and aggregate of profits in respect of which deduction is

to be allowed. Thereafter on 5.11.2001 by issuing a notice under Section 148 of the Income Tax Act, 1961 the reassessment proceedings in respect of the assessment year 1996-97 were initiated. Apparently, the notice was issued after expiry of four years from the end of assessment year 1996-97 and if the re-assessment proceedings were covered by proviso to section 147, it was barred by time. The CIT (A) found that the assessee has submitted his return and submitted all material which was required by the Assessing Officer and on that basis the assessment was completed. Thereafter no new material has come on record nor the material fact disclosed by the assessee were found to be incorrect. But on the basis of same material, the Assessing Officer had opined that computation of profits for determining deduction under Section 80HH and 80 I was on higher side, hence, there was escapement of income from the tax. Reliance was placed on a decision of the Court. Hence, the notice under Section 148 was issued to initiate reassessment proceedings. The CIT (A) found that Assessing Officer could not have held that he hold belief that escapement

of income from tax was due to any failure on the part of the assessee to disclose truly and correctly all material facts necessary for assessment. Therefore, it found that the case was covered by proviso to Section 147 and the same is barred by time. Consequently, the assumption of jurisdiction under Section 147 being without jurisdiction, the same was annulled.

The Tribunal found as a fact that every material was already before the Assessing Officer. Apparently, when it was not a case of any failure on the part of the assessee to disclose truly and correctly all material facts necessary for his assessment the reassessment proceeding could not have been initiated after expiry of 4 years from the end of relevant Assessment Year. What is required of the assessee is disclosure of all primary facts necessary for assessment. It is not the requirement of the provision that the assessee must also instruct the Assessing Officer about the inference to be drawn from such facts. The principle that primary facts should be disclosed and duty to draw the inference is of the Assessing Officer and is none of

the assessee's duty was well enunciated in Calcutta Discount Co. Ltd. Vs. ITO, Companies District I, Calcutta and another [1961] 41 I.T.R. 191.

Accordingly, in our opinion, no substantial question of law arises for consideration in this appeal. The appeal fails and is hereby dismissed.

[GOPAL KRISHAN VYAS], J. [RAJESH BALIA], J.

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